

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
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Rockville, Maryland 20850  
(240) 777-6600

[www.montgomerycountymd.gov/content/council/boa/board.asp](http://www.montgomerycountymd.gov/content/council/boa/board.asp)

**Case No. S-2587**

**PETITION OF QUARLES PETROLEUM**

**OPINION OF THE BOARD**

(Opinion Adopted July 21, 2004)

(Effective Date of Opinion: August 17, 2004)

Case No. S-2587 is an application for a special exception pursuant to Section 59-G-2.06 (Automobile Filling Station) of the Zoning Ordinance to permit: Quarles Petroleum, Inc. proposes to lease and operate the fueling facility component of the existing Ryder rental facility, as a Class 1, unattended automobile filling station. The special exception area covers the fueling facility component of the property and consists of approximately 0.23 acres (9,987 square feet) of the site. The proposed filling station will be a typical Q-Card station that will be used by business account credit holders only, using the Q-Card system. There will be no cash sales.

The existing fueling facilities located on site include 4 diesel fuel dispensers, an illuminated canopy over the fueling area, an attendant kiosk under the canopy and 2 underground storage tanks. Quarles proposes no installation of additional fueling dispensers and proposes no major modifications to existing facilities. The station will be open twenty-four hours a day, seven days a week, 365 days a year, with visits by fuel delivery and technical personnel two to three times weekly.

Pursuant to the authority in Section 59-A-4.125 of the Zoning Ordinance, the Board of Appeals referred the case to the Hearing Examiner for Montgomery County to hold a hearing and submit a written report and recommendation for Board approval. The Hearing Examiner convened a hearing on May 3, 1004. Following a motion to amend the Petition, and several subsequent submissions from the Petitioner, the record closed on June 17, 2004. On July 16, 2004, the Hearing Examiner issued a report and recommendation for approval of the special exception, with conditions.

The subject property is in Lot 1; Block H; Montgomery County Airpark Industrial Sites Subdivision, located at 19210 Woodfield Road, Gaithersburg, Maryland, 20879, in the I-4 Zone.

Decision of the Board: Special Exception Granted Subject to conditions enumerated below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on July 21, 2004. After careful consideration and review of the record, the Board adopts the report and recommendation and grants the special exception subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel to the extent that such evidence and representations are identified in the Hearing Examiner's Report or in the Opinion of the Board.
2. The special exception is limited to four existing pumping stations/three fuel dispensers as an unattended operation.
3. The Petitioner must comply with stormwater and sediment control regulations of the Montgomery County Department of Permitting Services (DPS).
4. Fuel storage tank and fuel pump installation and use, must comply with the control guidelines and air quality permitting requirements of the Maryland Department of the Environment (MDE). In particular, the Petitioner must properly install, maintain and use Stage I and Stage II Vapor Recovery systems and a Vapor balance line.
5. Fuel storage tanks must meet required technical standards and must comply with all county, state and federal permitting requirements.
6. The canopy area for the automobile fuel pumps is limited to its current dimensions.
7. The former attendant's kiosk, proposed as an electrical/storage equipment storage kiosk, is limited to its present dimensions.
8. The Board's opinion will be effective no sooner than July 26, 2004.

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement and

Allison Ishihara Fultz necessarily absent, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 17<sup>th</sup> day of August, 2004.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

**BEFORE THE MONTGOMERY COUNTY  
BOARD OF APPEALS**

**Office of Zoning and Administrative Hearings  
Stella B. Werner Council Office Building  
Rockville, Maryland 20850  
(240) 777-6660**

**IN THE MATTER OF QUARLES PETROLEUM**

Petitioner

Greg Natvig

Leonard Bogorad

Craig McBride

Stephen E. Crum

Stephen Peterson

For the Petition

S-2587

Jody S. Kline, Esquire

04-12)

Attorney for the Petitioner

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Martin Klauber, Esquire, People's Counsel

In Support of the Petition

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Tony Avedisian

In Support of the Petition

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Before: Martin L. Grossman, Hearing Examiner

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Board of Appeals Case No.

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**HEARING EXAMINER'S REPORT AND RECOMMENDATION**

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## I. STATEMENT OF THE CASE

Petition No. S-2587, filed on July 17, 2003, seeks a Special Exception, pursuant to §59-G-2.06 of the Zoning Ordinance, to allow an existing Automobile Filling Station to service clients in addition to the current on-site user, Ryder Truck Rental. The Ryder Truck Rental property is owned by TCKC, LLC, of 7500 Rickenbacker Drive, Gaithersburg, one of the properties immediately to the north of Ryder Truck Rental. The Ryder facility is located at 19210 Woodfield Road, Gaithersburg, Maryland, on 2.19 acres, zoned I-4 (Low Intensity- Light Industrial). The actual area of the special exception request is contained in a 9,987 square foot leasehold at the southern end of the property, and it includes only the area of the fuel station and the driveway. Although the fuel station already exists, it presently services only Ryder Trucks. It therefore is considered ancillary to the Ryder business and does not require a special exception. In order to service non-Ryder vehicles, a special exception is needed.

On August 27, 2003, the Board of Appeals issued a notice (Exhibit 12) that a hearing in this matter would be held by the Hearing Examiner for Montgomery County on November 11, 2003, at 10:30 a.m., in the Second Floor Hearing Room of the Stella B. Werner Council Office Building. On September 10, 2003, the Board of Appeals adopted a resolution (Exhibit 14) referring this case to the Hearing Examiner for Montgomery County to conduct a public hearing and issue a written report and recommendation to the Board of Appeals for final action. On September 30, 2003, the Hearing Examiner continued the hearing to December 12, 2003 (Exhibit 15). An amendment to the Petition was noticed on November 21, 2003 (Exhibit 18), and the case was consolidated for hearing with Petitioner's pending Variance Application # A-5962, by the Board's Resolution adopted on February 18, 2004. At Petitioner's request, the hearing was first postponed indefinitely and then rescheduled to take place on May 3, 2004, at 9:30 a.m. (Exhibit 24).

Technical Staff at the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a memorandum dated April 27, 2004, recommended approval of the petition, with conditions (Exhibit 25).<sup>1</sup>

A public hearing was convened as scheduled on May 3, 2004, to hear both the special exception petition and the variance request. Testimony was presented by Petitioner's five witnesses, and by Tony Avedisian, who owns the nearby Tony's Corvette Shop. The Hearing Examiner discovered, after the Hearing, that Mr. Avedisian is also a partner in TCKC, LLC, which owns the subject property (Exhibit 52). Mr. Avedisian also wrote a letter of support which is in the file as Exhibit 19, and, at the Hearing, introduced a letter from a local resident, Stephen E. Row of 19300 Cypress Hill Way, Gaithersburg, (Exhibit 39) stating that "the lights . . . at the Ryder Truck Facility cannot be seen from the vast majority of homes in our neighborhood." The People's Counsel participated in the hearing but did not call any witnesses, and the record was scheduled to close on June 4, 2004, following submission of additional materials by Petitioner.

On May 17, 2004, Petitioner moved to amend the Petition (Exhibit 41) with a new Site Plan (Exhibit 41(a)), showing a relocation of the southernmost pump. On the same date, Petitioner also moved to amend the Petition with a revised Landscape and Lighting Plan (Exhibit 42(a)) and a new Photometric Analysis and Lighting Detail (Exhibit 42(b)). A

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<sup>1</sup> The Technical Staff Report is frequently quoted and paraphrased herein.

supplemental report from Technical Staff was received on May 24, 2004, in response to questions from the Hearing Examiner. That supplemental report observed no problems with the new site plan, landscaping plan and lighting plan. In addition, on May 26, 2004, Petitioner filed documents authorizing the Petitioner (Exhibit 46(a)) to install and maintain lights and landscaping on the Ryder property (*i.e.*, outside the leasehold area) and urging (Exhibit 46) that such a practice should be approved because it has been previously authorized by the Board of Appeals in other cases which Petitioner attached (Exhibits 46(b), (c) and (d)).

On June 4, 2004, Petitioner filed a letter from Tariq A. El-Baba, Associate General Counsel of the M-NCPPC (Exhibit 47(a)), opining that the existing canopy over the fuel pumps was a conforming use under the applicable statute, and did not require a variance even though its location was less than 10 feet from the property line, which is the setback in the current I-4 Zone. Also attached was a memorandum from Craig McBride, Petitioner's corporate engineer, discussing regulations with regard to the proposal to relocate one fuel pump (Exhibit 47(b)).

In another June 4, 2004 filing, Petitioner submitted a letter confirming that it was withdrawing its application for a variance in BOA# A-5962 because Petitioner had elected to move one of the fuel pumps in order to meet the Special Exception setback provision, and its counsel felt that, as a result, a variance was no longer required (Exhibit 48). Attached to that letter was a letter Petitioner's counsel had sent to David Niblock, Permitting Services Specialist for the Department of Permitting Services (DPS). In the letter to Mr. Niblock, Petitioner's counsel asserted his understanding from DPS that "a concrete island and a fuel dispenser mounted on a pump island, are not considered 'structures' and do not require a building permit." (Exhibit 48(b)). Mr. Niblock signed an endorsement to the affirming that "THE DEPARTMENT CONCURS IN THE ABOVE STATEMENTS."

In its final June 4, 2004 submission (Exhibit 49), Petitioner moved to amend the Petition by filing a Supplemental Statement of Operations (Exhibit 49(a)) reflecting the relocation of the southernmost pump and the addition of appropriate signage to direct larger vehicles to the other pumps, which have a wider drive lane. All the post-Hearing amendments were noticed on June 7, 2004, and interested parties were given ten days to object. No further filings were received, and the record closed on June 17, 2004. It was reopened on July 9, 2004, solely to receive Mr. Avedisian's letter of July 7, 2004, acknowledging that he is a partner in the business entity (*i.e.*, TCKC, LLC) that owns the subject property (Exhibit 52). The record closed again on the same date (Exhibit 53).

Whether moving the southernmost pump 2.5 feet to the north allows Petitioner to meet both the Zone and Special Exception setback requirements, without a variance, is the only difficult issue in this case, and it will be discussed in Part II. E., below.

## **II. FACTUAL BACKGROUND AND ANALYSIS**

### **A. The Subject Property**

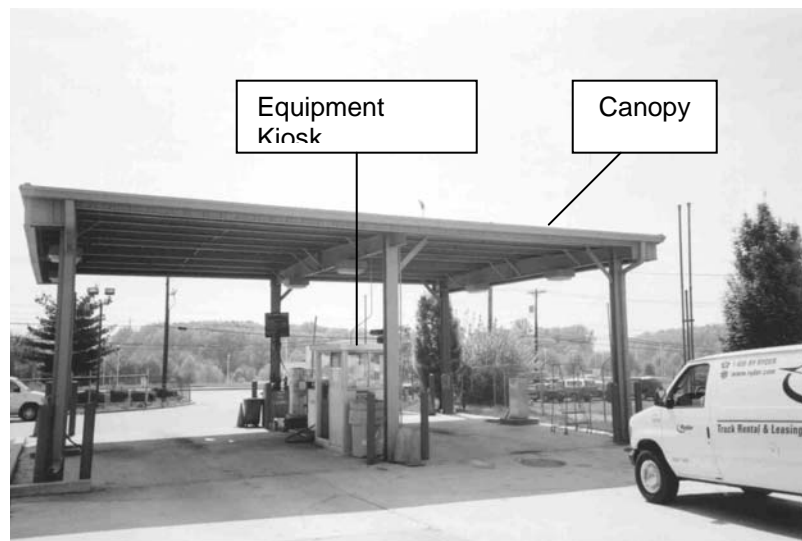
The property on which the subject leasehold is located is currently occupied by Ryder Trucks. The site is located on the west side of Woodfield Road (MD 124) south of the intersection with Rickenbacker Drive. The property is known as Lot 1, Block H, of the Montgomery County Airpark Industrial Sites Subdivision, and is zoned I-4 for low-intensity, light industrial use. Technical Staff describes the 2.19-acre lot as elongated and "basically flat, except for a swale parallel to Woodfield Road." The lot has a 200-foot frontage along

Woodfield Road and is about 445 feet deep. According to Technical Staff, the one-story building containing administrative space and vehicle service bays for the Ryder enterprise occupies 9,180-square feet.

A 15-foot driveway entrance is located on Woodfield Road at the southern end of the property and is shared with the neighboring lot to the south. It widens to a driveway circulating the building and leading to the fuel station on the far southern side. A pylon sign marks the entranceway. Parking spaces line the north, east and west sides of the property. Technical Staff notes that minimal landscaping is provided in front of the building, and much of an approximately 40-foot strip in front of the street is planted with grass, pine trees and additional landscaping. Also, some shade trees are located along the side and rear perimeters of the site, and a hedge is located along the border with the MacDonald's restaurant/Amoco station to the north. The property is secured with a 6½ foot, chain link fence.

As mentioned above, the actual area of the special exception request is contained in a 9,987 square foot leasehold at the southern end of the property, and it includes only the area of the fuel station and the driveway. Photos of the front and rear of the fuel pump area, as it exists today, are helpful in

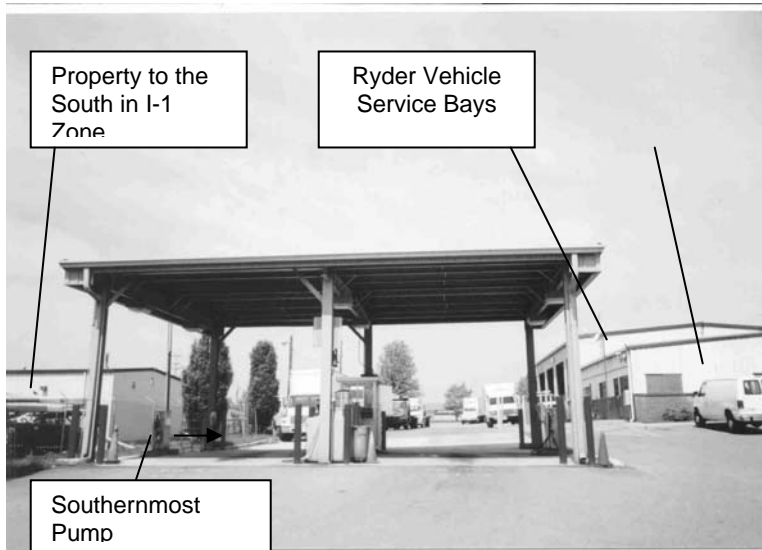
Ryder  
Administrative  
Building



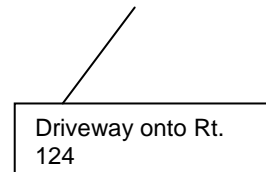
REAR ELEVATION  
(From West toward Route 124)

understanding this case (Exhibit 8(a) and (b)).

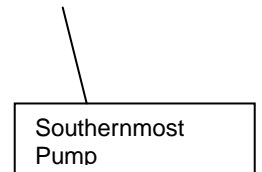




FRONT ELEVATION  
(From Route 124)



Driveway onto Rt.  
124



Southernmost  
Pump

The only structural change planned to this area is the relocation of the southernmost fuel pump 2½ feet to the north, as indicated by the arrow next to the pump in the photo on the left.

### **B. The Neighborhood and its Character**

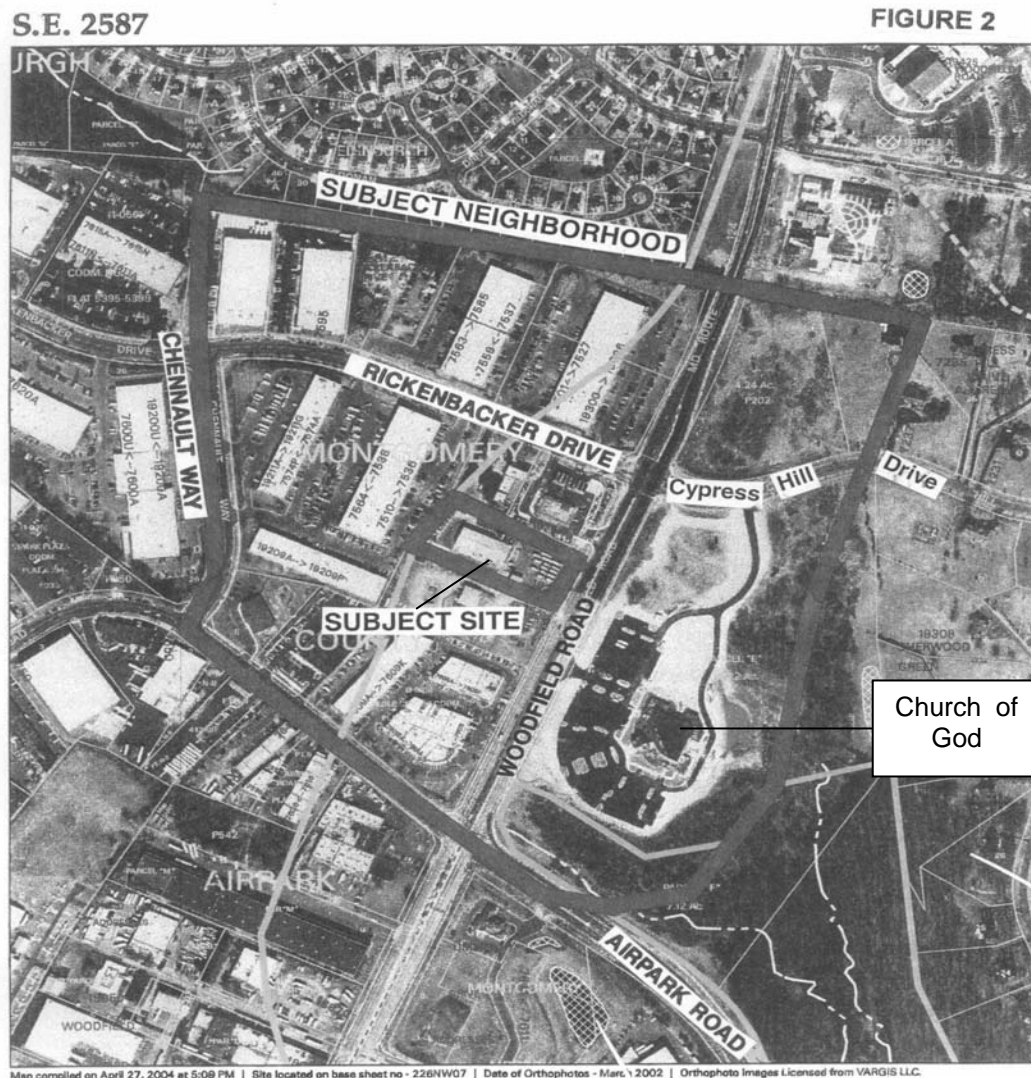
Technical Staff defined the surrounding neighborhood as bounded on the north by the northern edge of Montgomery County Airpark (and beyond that, the Hadley Farms Subdivision), on the east by a line running 600 to 700 feet east of, and more or less parallel to, Woodfield Road (MD 124), on the south by Airpark Road and on the west by Chennault Way. The Hearing Examiner accepts this definition.<sup>2</sup>

<sup>2</sup> It should be noted that the surrounding neighborhood for land use purposes is not the same as the defined neighborhood for needs analysis, which will be discussed in Part II. G. of this Report. In evaluating the need for this business, Petitioner included potential users in a two mile ring surrounding the subject site, and the Technical Staff agreed with that definition.

Properties immediately surrounding the subject use include, to the north, Tony's Corvette Shop, a MacDonald's and an Amoco service station, all on I-1-zoned land within the Montgomery County Airpark. To the immediate south is Rockingham Construction on land zoned I-1. Immediately west of the subject property are other light industrial uses in the Montgomery County Airpark on mostly I-4 zoned land. Confronting the subject property, on the east side of Woodfield Road, is the Interdenominational Church of God, on RE-1-zoned property for single-family residential use. Land uses within the neighborhood are generally light industrial and commercial, on I-1 and I-4 land west of Woodfield Road, and institutional, on RE-1 land east of Woodfield Road. According to Technical Staff, there is one single-family residence northeast of the subject site, across Westfield Road. Testimony revealed other single family residences on Cypress Hill Drive, but they are outside of the defined neighborhood. Tr. 149. The vicinity of the subject site is depicted in the aerial photo shown below:

### C. The Master Plan

The subject property is located within the 1985 Gaithersburg Vicinity Master Plan area. The Master Plan sets the recommended zoning for the Airpark area in Table 3 on pp. 46-48. The subject property and its immediate surroundings are

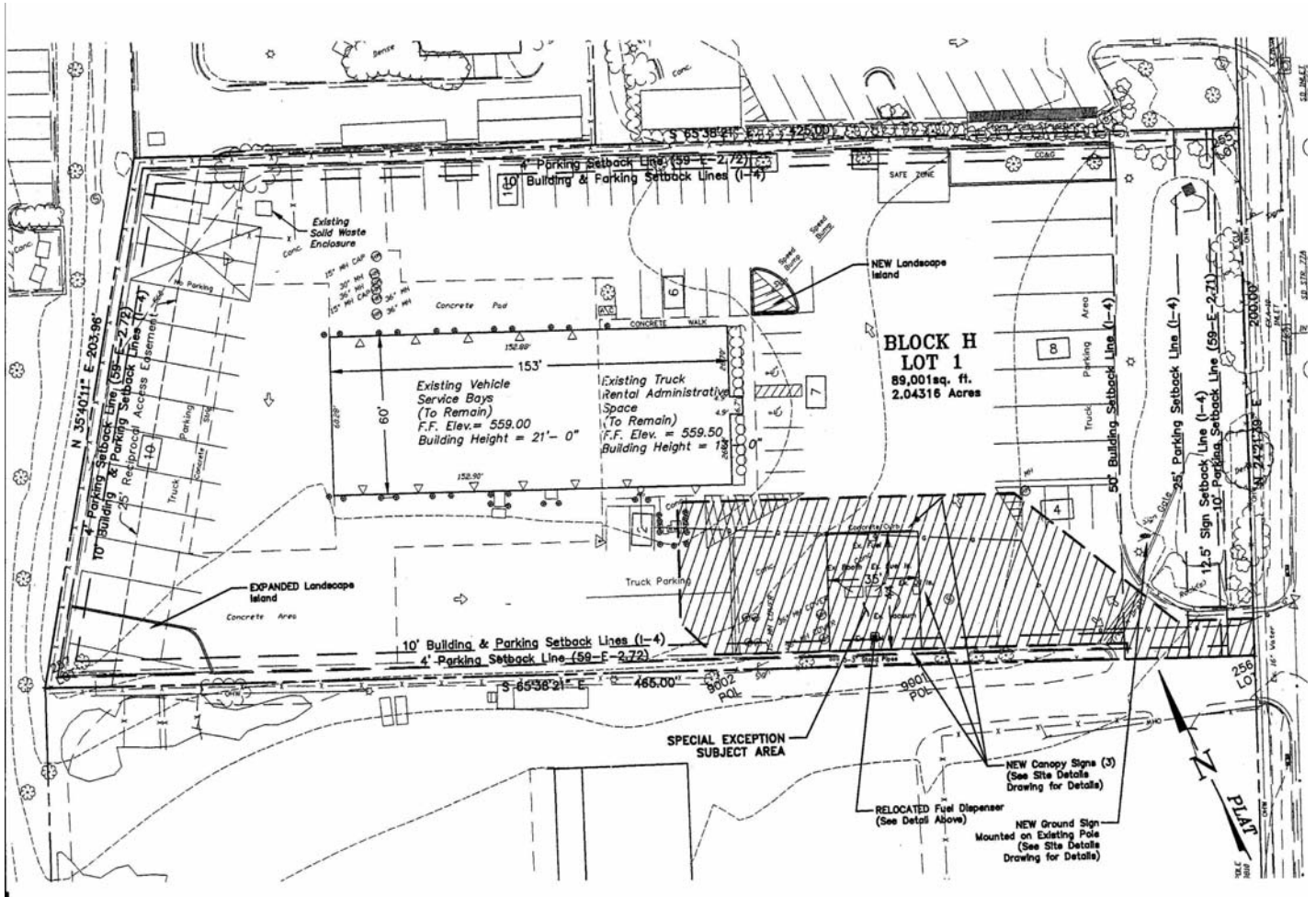


located in item number 61 (p. 48), and the Plan recommends the I-1 and I-4 zones currently located in the area. In fact, the Plan notes that the I-4 Zone was created “to guide development of industrial parcels in this area” (p. 49). There is no further guidance in the Master Plan, but the I-4 Zone it endorses does permit the requested Automobile Filling Station as a special exception. Thus, the Hearing Examiner finds, as did Technical Staff, that the proposed use is in conformance with the Master Plan.

#### **D. The Proposed Use**

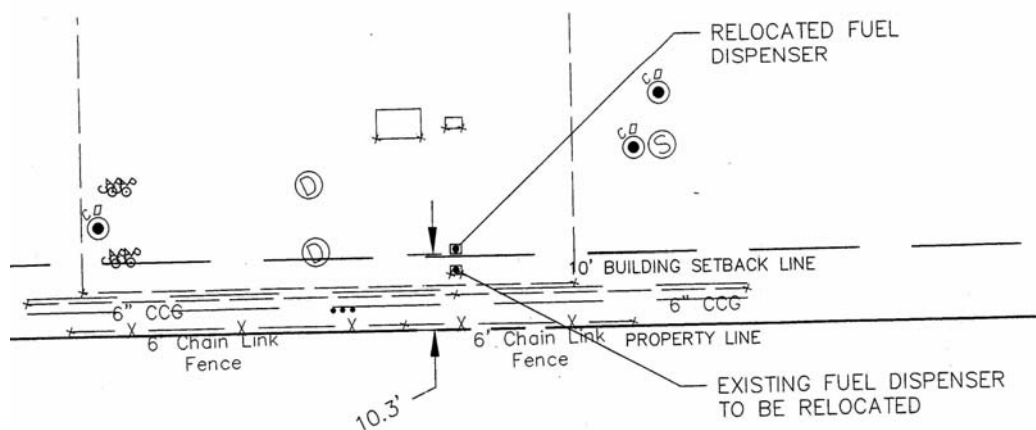
Petitioner, Quarles Petroleum, Inc. is requesting a special exception to operate a Class I, unmanned, automobile filling station on property occupied by a Ryder Truck Rental facility, located on 2.19 acres at 19280 Woodfield Road in the Montgomery Airpark section of Gaithersburg. As mentioned above, the actual area of the special exception request is contained in a 9,987 square foot leasehold, held under a ten year lease (Exhibit 9), at the southern end of the property, and it includes only the area of the fuel station and the driveway. This elongated strip, at its maximum points, measures about 210 feet long and 60 feet wide. Although the fuel station already exists, it presently services only Ryder Trucks. It therefore is considered ancillary to the Ryder business and does not require a special exception. In order to service non-Ryder vehicles, a special exception is needed; however, Quarles proposes no additional fueling dispensers and no major modifications to existing facilities, except that it plans to move the southernmost pump two and a half feet to the north to satisfy the 10 foot setback contained in the applicable special exception provision, Zoning Code §59-G-2.06(b)(5).

The layout of the facility is displayed in the diagram from the revised Site Plan (Exhibit 41(a)). The area of the leasehold is shown by crosshatch marks, surrounded by a dotted line.



The detail of the proposed pump movement, also from the revised Site Plan, is shown below:

Technical Staff reviewed the proposed movement of the southernmost fuel



**FUEL DISPENSER DETAIL**

pump and found "that the subject site will be able to safely accommodate one

lane of traffic in each aisle.” Staff concluded that there was “no objection to the proposal from a transportation standpoint.” Exhibit 45. Petitioner also submitted a memo from Craig McBride, Petitioner’s corporate engineer, indicating that at least one lane would meet the accessibility criteria under the Americans with Disabilities Act (ADA), thereby meeting ADA requirements. Exhibit 47(a).

Petitioner describes the proposed use in its Statement of Operations, Exhibit 3(a), which is partially quoted and paraphrased below:

Quarles has leased the existing fueling facilities on-site, including four diesel fuel dispensers, an eleven hundred square foot, illuminated canopy over the fueling area, an attendant kiosk under the canopy to be used only for storage of equipment, and two underground fuel storage tanks equipped with automated sensors. Three fuel islands and two drive-through lanes are located underneath the canopy.

The facility will be open 7 days a week, 24 hours a day. Although no employees will work at the site, delivery and technical personnel will visit two to three times a week. Quarles Petroleum, Inc. is a family owned corporation that has been in business for over fifty years and operates a number of unattended, “Q-Card” fuel stations throughout the Maryland/Virginia area.

The first unattended Q-Card fuel station opened in 1980, and by January 2000 there were forty-one (41) Q-Card facilities in operation.

The typical Q-Card unattended fuel station sells diesel fuel and gasoline, but the one intended for the subject site will utilize only the existing four pumps, all of which distribute diesel fuel. There will be no cash sales. Only commercial customers issued a proprietary Q-Card Fuel Network credit card can activate the fuel dispensers, and it is therefore not possible for a person without a Q-Card to purchase fuel at an unattended Q-Card fuel station.

Each customer is visited by a Quarles salesperson at the customer’s place of business to allow the salesperson to evaluate the customer’s fuel needs and structure a fuel program tailored to those needs. A typical Q-Card Fuel Network customer is a business that operates a fleet of vehicles and is located within a three-mile radius of an unattended fuel station. Thus the subject site is intended to serve fleets of commercial customers in the surrounding Airpark industrial area. The need for this service will be discussed in Part II. G. of this report.

Once a business is accepted as a customer, the salesperson arranges for the preparation and delivery of the Q-Card Fuel Network credit cards. The credit cards are coded with the appropriate type of fuel, limits on the amount of fuel that can be dispensed during a transaction and limits on the total amount of fuel that can be dispensed during each day. When the credit card is delivered to the customer, the salesperson instructs the customer’s drivers in the use and operation of the Q-Card unattended fuel station equipment and emergency response procedures.

A pay telephone installed at or near each unattended fuel station is available to the customer for reporting problems at the facility. In addition, a site identification sign, Q-Card general information sign, and signs displaying operation instructions, emergency response procedures and Fire Code safety warnings are posted at each station.

As mentioned, diesel fuel is stored in two underground tanks equipped with automated sensors. Electronic automated gauge equipment for the underground tanks and

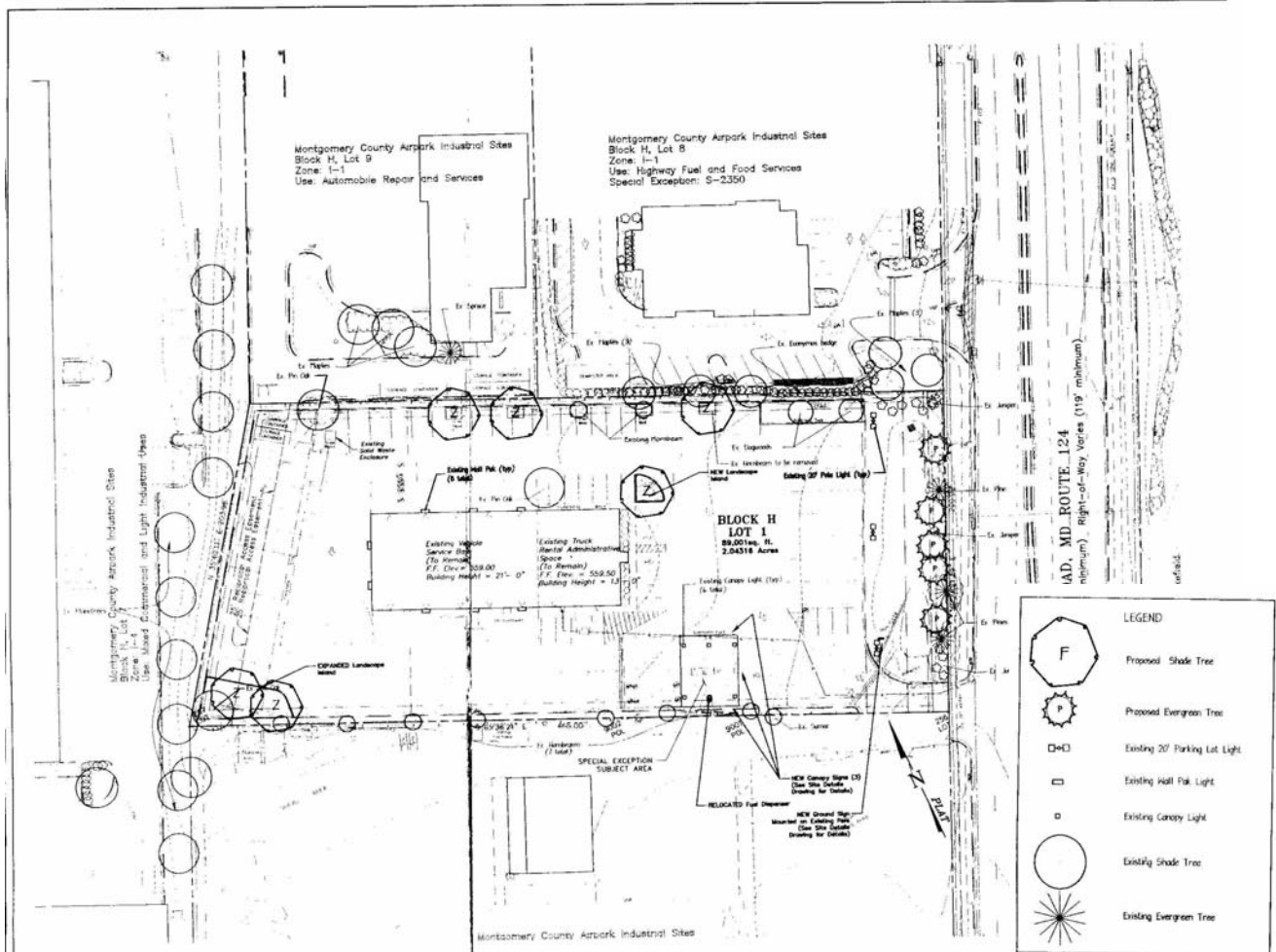
electrical control equipment for the fuel dispensers are already in place in the former attendant's kiosk that is located under the canopy covering the refueling area. Tr. 66. Fuel inventory is monitored via telephone modem, so that it can be timely restocked when necessary. According to Petitioner's Statement of Operations, "Fuel storage and handling equipment conforms to Environmental Protection Agency, Maryland Department of the Environment, Virginia Department of Environmental Quality, National Fire Protection Association, Underwriters Laboratory and all applicable state and local building codes."

Quarles Petroleum transport drivers make fuel deliveries to each site at least twice weekly. In addition, the Q-Card Division employs maintenance personnel to visit each site twice weekly to empty waste containers provided at the fuel islands and to do general site clean up. Maintenance personnel replace site signs as needed and keep the equipment clean and painted.

Additional maintenance employees visit each site at least twice monthly to pressure wash the pavement, while technicians visit each site at least twice weekly to check and service equipment and ensure proper operation. These employees are available on a twenty-four hour basis to respond to problems that may occur. All of these visits ensure that problems are generally reported and addressed relatively quickly.

Initially, Petitioner planned some additions to the landscaping, but no new lighting. These plans have been changed by subsequent developments. *See*, Exhibit 42. The Landscaping Plan had to be revised because TCKC, LLC, which owns the lot, felt that the location of the planned landscape islands would be too difficult for inexperienced drivers who often rent Ryder Trucks to maneuver around. Therefore, the location of a proposed landscape island was moved. Also, the type of proposed trees was changed based on availability problems.

Technical Staff recommended approval of the revised landscape plan in its May 28, 2004 memorandum responding to the Hearing Examiner's questions (Exhibit 45). Staff found that "the revised landscape plan meets the objective of substantially screening the Ryder Truck facility and the fueling station from Woodfield Road." The revised plan calls for planting five Austrian pine trees in the gaps along Woodfield Road. Technical Staff also concluded that the movement of the proposed landscape islands "will improve traffic flow and safety and will be balanced by the tree planting proposed along Woodfield Road." The diagram portion of the revised Landscaping and Lighting Plan is shown below (Exhibit 42(a)):

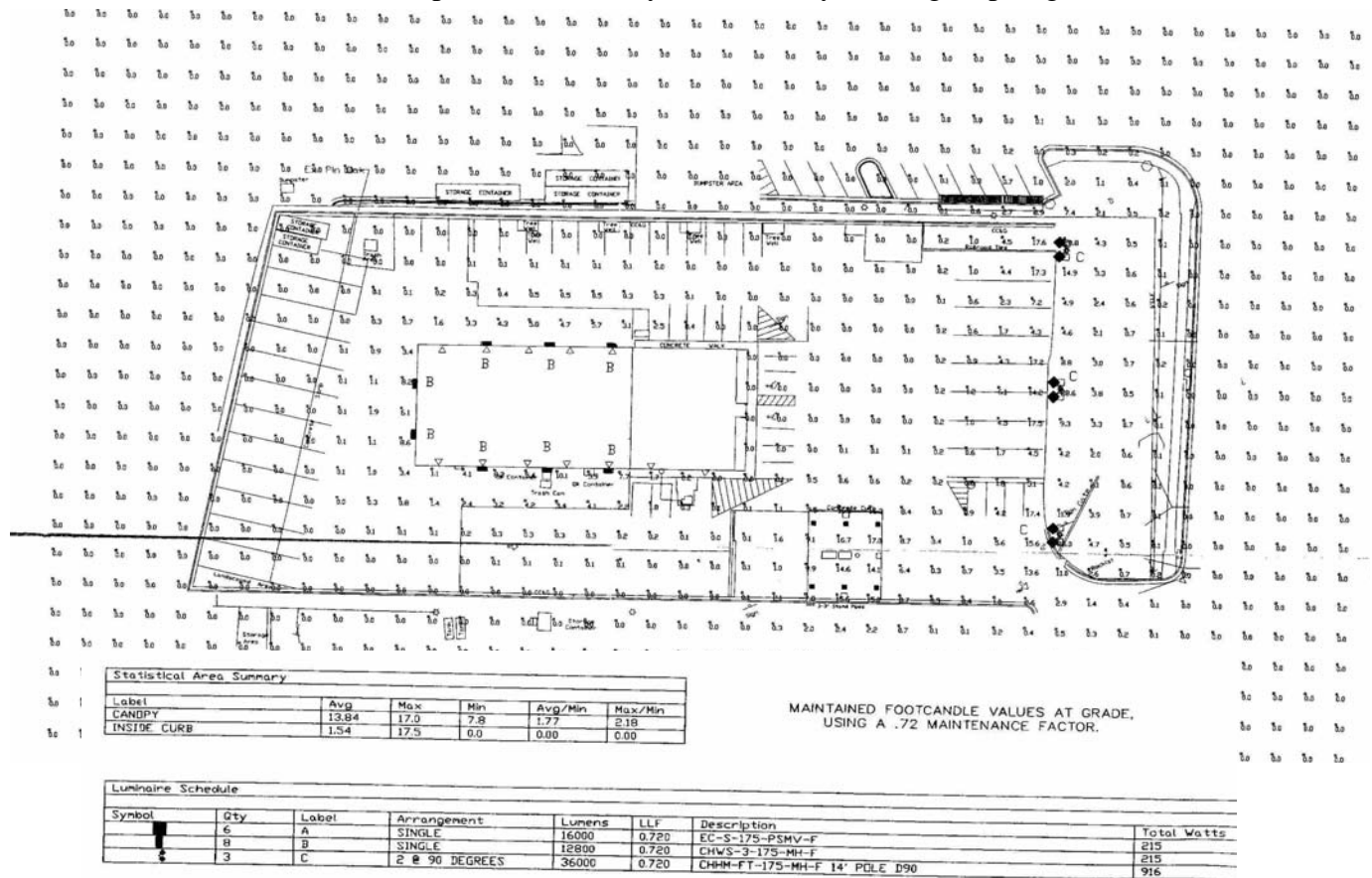


As to lighting, Petitioner ran into difficulty properly assessing the off-site effect of the existing lighting (Exhibit 42), and therefore elected to replace the existing lighting with new fixtures, both on the canopy and elsewhere in the Ryder facility. To do so, Petitioner obtained written permission from the landlord, TCKC, LLC, to install and maintain the subject lights (Exhibit 46(a)). The same letter also authorized Petitioner to install and maintain the landscaping shown on the revised Landscape and Lighting Plan. Because some of the lighting and landscaping in question is outside the Quarles leasehold area (but not outside the lot in question), People's Counsel expressed a concern as to whether the Board of Appeals could condition a special exception by requiring action outside the area subject to the special exception. Tr. 76-84. In response, Petitioner submitted copies of Board Opinions in other cases (S-1634, S-1930 and S-862-A) in which the Board did, in fact, condition grants of special exceptions upon off-site performance by petitioners. Exhibits 46(b), (c) and (d). The Hearing Examiner is satisfied that the Board has, in the past, conditioned special exceptions in this manner, and that it has the authority to do so. The Board is not requiring anybody but the Petitioner to do something, and it is the Petitioner which is before the Board. If the Petitioner does not object to the condition, as is the case here, then a reasonable condition which is within the Petitioner's capabilities, through agreement with others, seems

perfectly appropriate.

Petitioner's photometric study (Exhibit 42(b)) of the off-site effects of its proposed lighting is set forth below:

As is clear from this photometric study, there is very little light spillage outside of



the Ryder Truck facility. That light which does escape penetrates only a short distance onto the neighboring industrially zoned properties. Technical Staff reviewed the revised lighting plan, and determined that the proposed lighting for the subject site will not adversely affecting surrounding properties. Noting that the both the canopy lights and the pole lights will be full cut-off lights to prevent spill-off on neighboring properties, Technical Staff recommended "approval of the latest revised lighting plan as well as the schematic lighting grid." Exhibit 45.

A site-identification sign with blue lettering will be added to the canopy, and a site-identification sign will be attached to the Ryder truck sign at the entrance area. Both the identification signs will be illuminated. In addition, general informational, operational, and emergency signs will be posted at the subject site. Because the movement of the southernmost pump will narrow the southern fuel lane somewhat, Petitioner will also install directional signage on the canopy support columns, directing smaller vehicles to the narrow lane and wider ones to the wider lane (Exhibit 49(a)).

### E. The Setback Issues

There are two setback issues in this case. The first pertains to the I-4 Zone provision requiring that "all buildings shall be set back at least . . . [t]en feet from any



*commercial or industrial zone.*” Zoning Code §59-C-5.35(b). The second setback issue arises out of the Auto Filling Station Special Exception provisions. Zoning Code §59-G-2.06(b)(5) provides, in relevant part, that “*Gasoline pumps or other service appliances shall be located on the lot at least 10 feet behind the building line.*” We shall first address the I-4 Zone setback issue.

1. The I-4 Zone Setback Issue:

In their current locations, both the southernmost pump and the southern side of the canopy over the pumps are only 7.55 feet from the southern property line. They were constructed when the property was zoned I-1, which required no setback from a neighboring industrial zone. Accordingly, they complied with applicable development standards when built. Immediately to the south of the subject lot is a property which is still in the I-1 Zone. Since the quoted I-4 Zone setback, by its own terms, applies only to buildings, we first turn to the definition of the term “Building” in Zoning Code §59-A-2.1.

A “*Building*” is defined as,

*A structure having one or more stories and a roof, designed primarily for the shelter, support or enclosure of persons, animals or property of any kind.*

Under this definition, a fuel pump is clearly not a building; nor is the island it sits on. Therefore, the 10 foot setback in the I-4 Zone does not apply to either.

The subject canopy, on the other hand, may well fall within the definition of “building.” If it does, then it may be a nonconforming structure in the I-4 Zone because it is not set back 10 feet from the neighboring industrial zone. To determine the impact, if any, from this situation, we must turn to two statutory provisions which govern nonconforming structures, one general and one specific to the I-4 Zone.

The specific provision for the I-4 Zone is contained in Zoning Code §59-5.441, which provides:

*59-C-5.441. Special provisions for lots containing pre-existing uses.*

*Where land, improved by existing lawfully conforming structures and uses under the standards and special regulations of the immediately preceding zone, is reclassified to the I-4 zone and the standards of the I-4 zone do not allow such structures and uses, such structures and uses may continue as conforming structures and uses as of the date of reclassification. However, additions or structural alterations cannot increase the amount of floor area devoted to such uses by more than 10 percent. Any such changes or additions must conform to the setback, height, floor area ratio, and green area regulations required in Section 59-C-5.35 or Section 59-C-5.44, as applicable.*

There are no alterations, renovations or enlargements planned for the canopy. Based on that fact, M-NCPPC General Counsel’s office opined that §59-C-5.441 made the 10 foot I-4 Zone setback inapplicable to the canopy (Exhibit 47(a)), and the Hearing Examiner agrees. Moreover, §59-C-5.441 allows the structure in question to “continue as [a] conforming structure . . . .”<sup>3</sup> The Associate General Counsel was careful to note that

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<sup>3</sup> For ease of understanding, structures which do not comport with the current zone requirements may

his opinion did not address the questions relating to the fuel pump's location.

A similar conclusion is reached when applying the general provisions governing nonconforming structures,<sup>4</sup> which can be found in Zoning Code §59-G-4.12:

**59-G-4.12. Structural alterations.**

*Except as otherwise provided in this Chapter, a nonconforming building or structure may be altered, renovated, or enlarged only if the construction will conform the building or structure to the requirements for the zone in effect when construction begins.*

As noted above, there are no alterations, renovations or enlargements planned to the canopy, and therefore the canopy does not have to be brought into compliance with the I-4 Zone setbacks under either provision, even if it is considered a building.

**2. The Special Exception Fuel Pump Setback Issue:**

As noted above, Zoning Code §59-G-2.06(b)(5) provides, in relevant part, that “Gasoline pumps or other service appliances shall be located on the lot at least 10 feet behind the building line.” The present location of the southernmost pump is 7.55 feet from the side lot line (also referred to as the “southern property line”). Under the old I-1 Zone, that would also make it 7.55 feet from the building line<sup>5</sup> because, unlike the I-4 Zone, it did not require a setback from a neighboring industrial zone. Solely in order to meet the Special Exception setback requirements, Petitioner plans to move the pump 2.5 feet to the north, which would put it 10 feet from the southern property line and thus 10 feet from the building line under the old I-1 Zone. The question is whether the alteration of the pump's location will make the new I-4 Zone's building setback applicable, so as to render the newly located pump non-compliant with the very Special Exception setback requirement Petitioner is trying to satisfy by moving the pump? This would occur if the I-4 Zone's 10 foot building setback requirement moved the building line 10 feet to the north of the southern property line, which would place it right at the pump's new location. The pump would then not be 10 feet from the building line, as required by the Special Exception in question.

Petitioner contends that moving the fuel pump does not trigger this change because, according to Petitioner, with support from DPS, neither the pump nor the island it sits on is a building or structure. If neither a building nor a structure is altered, then neither of the “non-conforming structure” provisions, Zoning Code §59-C-5.441 and Zoning Code §59-G-4.12, would apply, and there would be no requirement to meet the new Zone's setback standards.

The Zoning Code's definition of the term “Building” was quoted above, and we concluded the obvious – that a fuel pump and a pump island are not buildings. Of course, all buildings are structures, but not all structures are buildings.

A “Structure” is defined in Zoning Code §59-A-2.1 as,

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occasionally be referred to herein as “nonconforming structures,” even though the quoted Code provision permits them to “continue as conforming structures.”

<sup>4</sup> There are different subsections which govern nonconforming uses, as distinguished from nonconforming structures, which are at issue in this case.

<sup>5</sup> The “Building Line” is defined as “A line, parallel to a lot line, creating an area into which a structure must not project, except as provided in article 59-B of this chapter.” Zoning Code §59-A-2.1.

*“An assembly of materials forming a construction for occupancy or use including, among others, buildings, stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio and TV broadcasting towers, water tanks, trestles, piers, wharves, open sheds, coal bins, shelters, fences, walls, signs, power line towers, pipelines, railroad tracks and poles.”*

Since a water tank and a pipeline are both defined as structures, it is difficult to understand why a fuel pump attached to the land would not also be considered a structure. Similarly, since a platform is defined as a structure, it would seem that a pump island serving as a platform for a fuel pump should also be considered a structure.

Nevertheless, DPS apparently does not think so. As mentioned in Part I of this Report, that agency endorsed the assertion that that “a concrete island and a fuel dispenser mounted on a pump island, are not considered ‘structures’ and do not require a building permit.” (Exhibit 48(b)). Some deference must be given to an administrative agency’s interpretation of its own statute. As stated in *Watkins v. Secretary, Dept. of Public Safety and Correctional Services*, 377 Md. 34, 46, 831 A.2d 1079, 1086), “We must respect the expertise of the agency and accord deference to its interpretation of a statute that it administers.” If DPS is correct, then Petitioner does not run afoul of the special exception setback requirement because moving the pump does not alter a structure, and therefore the old I-1 Zone’s setbacks still apply. However, if DPS is wrong and the fuel pump or its island is a structure, then the outcome is less certain.

In *County Council of Prince George's County, v. E. L. Gardner, Inc.*, 293 Md. 259, 443 A.2d 114), the Maryland Court of Appeals was faced with an application for a special exception to establish a wet gravel processing facility on land that had an ongoing dry sand and gravel processing facility, which itself was a legal, nonconforming, special exception use. Although our case deals with a possibly nonconforming structure, rather than a nonconforming use, the *Gardner* case is nevertheless instructive in its approach to statutory interpretation in a similar context. The Court looked to a strict construction of the statute governing nonconforming uses, and determined that the statute controlling in *Gardner* permitted some expansion of the old use, but not introduction of a new nonconforming use.

Ordinarily, applying for a special exception, especially in conjunction with alteration of a structure, would trigger the requirements of the current zone, thereby moving the building line 10 feet back from the southern property line. Under that analysis, one cannot apply for a special exception and alter any structure without encountering all of the development standards of the current zone, and therefore the special exception setback would look to the current I-4 Zone’s requirements to determine the location of the building line. As a result, the Petitioner would not be entitled to a special exception.<sup>6</sup> On the other hand, under the unusual circumstances of this case, such

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<sup>6</sup> That is, it would not be so entitled unless it also obtained a variance, pursuant to Zoning Code §59-G-3.1, from the special exception setback, which a special exception petitioner is permitted to seek under the authority of *Alviani v. Dixon*, 365 Md. 95, 775 A2d 1234 (2001). If Petitioner left the pump in place, most likely a 2½ foot variance would be required, since the pump is already 7.55 feet from the southern property line, which under the old zone is also the building line. It is also possible that a 12.5 foot variance would be

a harsh result may not be required by either the wording or the intent of the applicable Code provisions.

Although the general provision regarding non-conforming structures in Zoning Code §59-G-4.12 does not allow any changes in a nonconforming structure unless they conform to the new zone, the more specific provision that applies to the I-4 Zone, Zoning Code §59-C-5.441, is less restrictive. Zoning Code §59-C-5.441 specifies that “**structures and uses** [lawfully conforming to the prior zone] **may continue as conforming structures and uses as of the date of reclassification.** However, “**additions or structural alterations cannot increase the amount of floor area devoted to such uses by more than 10 percent. Any such changes or additions must conform to the setback, height, floor area ratio, and green area regulations required in Section 59-C-5.35 or Section 59-C-5.44, as applicable** [Emphasis supplied]. It thus appears that the intent of this provision is to allow a grandfathered structure in the I-4 Zone to remain under the old zone’s requirements unless changes would increase the floor area by more than 10 per cent (*i.e.*, “such changes”). As stated in *Dyer v. Otis Warren Real Estate Co.*, 371 Md. 576, 581, 810 A.2d 938, 941 (2002),

The “cardinal rule” of statutory construction “is to ascertain and effectuate legislative intent.”; “ ‘To this end, we begin our inquiry with the words of the statute and, ordinarily, when the words of the statute are clear and unambiguous, according to their commonly understood meaning, we end our inquiry there also.’ ” (quoting *Mayor & City Council of Baltimore v. Chase*, 360 Md. 121, 128, 756 A.2d 987, 991 (2000)).

There are no “such changes” in floor area contemplated here, and therefore a reasonable reading of this provision is that the I-1 Zone’s setback requirements and other development standards continue to apply even though the pump and island are being moved to comply with the special exception setback.

Although there is some conflict between the general “non-conforming structure” provision and the specific one for the I-4 Zone, a principle of statutory construction, as stated in *Young v. Anne Arundel Co.*, 146 Md.App. 526, 576, 807 A.2d 651, 681 (2002),

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required, if the Board deems that filing for the special exception itself triggers application of the current zone’s requirements. Whether or not Petitioner could obtain a variance is unclear because such an application would raise some novel issues. To obtain a variance, an applicant must show that the subject property is so unique from its surrounding properties (usually by virtue of its shape or topography) that it causes disparate zoning impact leading, absent a variance, to hardship (or at least practical difficulties in the case of an area variance). *Cromwell v. Ward*, 102 Md.App. 691, 651 A.2d 424 (1995). Although the Ryder property shares a driveway with its neighbor to the south, it is not uniquely shaped; nor does it have unusual topography. However, applicant could claim that the subject property is the leasehold, not the whole Ryder property, and the leasehold is certainly unique in its shape. On the other hand, under the case law, the hardship cannot be a self-inflicted wound, *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 214 A.2d 810 (1965), and one might argue that electing to lease a narrow, oddly shaped portion of a lot, is, in itself, a self-inflicted wound. Recent case law makes it clear that purchase of a property with knowledge that it is subject to area restrictions is not considered a self-created hardship, *Richard Roeser Professional Builder, Inc. v. Anne Arundel County*, 368 Md. 294, 793 A.2d 545 (2002); however, it is not clear whether that rule applies to rental of a small portion of an otherwise unrestricted lot. In any event, these issues are not before the Hearing Examiner because Petitioner withdrew its application for a variance.

is, “When two provisions, one general and the other specific, appear to cover the same subject but seem to conflict, the specific provision is controlling and prevails over the general enactment.” Thus, the less restrictive provisions of Zoning Code §59-C-5.441 should be applied here, and the structures in question remain grandfathered into the old Zone’s setback provisions.

Moreover, the 10 foot setback provision in the I-4 Zone, by its own terms, applies only to “buildings,” not to all structures. Since it is clear that neither the fuel pump nor the pump island is a “building,” neither can be in violation of the I-4 Zone’s 10 foot setback, no matter where they are located; nor, for that matter, would they violate any of the I-4 Zone’s other requirements. Therefore, the fact that they are being moved to comply with a special exception provision would not, in and of itself, render them non-compliant with either Zoning Code §59-C-5.441 or Zoning Code §59-G-4.12.

Nor does it seem logical to find that the movement of these non-buildings would alter the location of the building line on the southern end of this property. Otherwise, we would have the following anomalous result: An object that is 2½ feet too close to the building line to qualify for a special exception is moved the required 2½ feet by a Petitioner to meet the statutory terms, and in so doing, the object miraculously becomes 10 feet too close to the building line. Could the Council have intended such a surprising result when it framed the Zoning Code?

In the subject case, the movement of the fuel pump and pump island is not a modification to a building and is not inconsistent with any provision of the I-4 Zone itself. It is only the setback provision of the special exception, in combination with the I-4 Zone’s setback provision, that creates the question here. There is no language in the Code indicating that a movement of a structure solely to comply with a special exception requirement automatically requires substitution of the current zone’s setback provisions for the grandfathered zone’s setback provisions, as they pertain to the special exception.. If the new zone’s setback does not apply in this situation, then the building line remains where it is and moving the pump 2 ½ feet to the north will bring it into compliance with the terms of the subject special exception – 10 feet from the building line.

Thus, there are four possible interpretations of the applicable Code provisions. The first is DPS’s definition of structure which would not include the pump and its island, thereby permitting their movement without consequence. The second finds that the pump and the pump island are structures, and application of the current I-4 Zone’s setback requirements to the special exception application is required because Petitioner is applying for a special exception and the subject structures will be moved, even though that movement is intended solely to comply with

the special exception's setback requirements.<sup>7</sup> The third applies the language of the specific "nonconforming structure" provision of the I-4 Zone to conclude that the pump and its island remain "conforming structures" governed by the I-1 Zone's setback provisions. The fourth holds that even if the pump and its island are structures, their movement solely to satisfy the special exception setback provision does not trigger the new building line location under the current zone.

Given the four possible interpretations of the law, and the fact that the second possible interpretation would yield a counter-intuitive result, the Hearing Examiner believes it would be unfair to prohibit an otherwise compliant special exception in this case. The facts are quite unique and should not set an unacceptable precedent.

In sum, whether one applies the DPS's interpretation of "structure" or the Hearing Examiner's interpretation of statutory intent, Petitioner would be able to meet the 10 foot Special Exception setback provision by moving the southernmost pump 2 ½ feet to the north.

## **F. Traffic, Parking and the Environment**

### **1. Traffic:**

Petitioner's transportation expert, Stephen G. Peterson, did a study of the projected trips to be generated by the proposed special exception (Exhibit 16(a) and Tr. 138-145). He found that currently the Ryder facility generates 6 morning and 4 evening peak hour trips. The proposed special exception will generate an additional 39 morning and 30 evening peak hour trips. Thus, the total peak hour trips expected from the combined use amounts to 45 morning and 34 evening peak hour trips. Although those numbers are below the Local Area Transportation Review (LATR) threshold of 50 peak hour trips which would require a further traffic study, Mr. Peterson did do a critical lane analysis for the "right turn in" and "right turn out" of the facility and found that both were well below the 1500 congestion standard. Tr. 143.

Technical Staff reviewed these findings and concluded that "the proposed use satisfies the requirements of Local Area Transportation Review and Policy Area Transportation Review [PATR] tests and will have no adverse effect on Roadway conditions or pedestrian facilities." The approval regarding PATR is based on Technical Staff's determination that the Montgomery Village/Airpark Policy Area has a remaining capacity of a positive 37 jobs as of April 30, 2004, under the FY 2004 Annual Growth Policy (AGP) staging ceiling. Staff also noted that access to the site will remain unchanged, traffic patterns are not expected to change as a result of the special exception and there is more than sufficient pavement to ensure that vehicular queuing will be contained within the site.

Technical Staff concluded, as did Mr. Peterson (Tr. 144) that the special exception will not have an adverse effect on area roadway conditions or adversely effect vehicular or pedestrian safety. There is no evidence to the contrary, and the Hearing Examiner therefore agrees.

### **2. Parking:**

Technical Staff determined there are a total of 35 parking spaces available for use by employees and customers of the existing Ryder truck rental business. In addition,

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<sup>7</sup> It could well be argued that even if one employed this analysis and applied all the standards of the current I-4 Zone, those standards include the language of §59-C-5.441, which would maintain the grandfathered status of the objects in question.

there are 18 larger spaces available for truck storage. The parking requirement for the special exception is based on the number of employees and the amount of floor area devoted to the use. In this case, Technical Staff concluded that additional parking is not required (Exhibit 25).

### 3. The Environment:

The subject property is not within a special protection area, and a Natural Resource Inventory/Forest Stand Delineation was reviewed and approved by the Technical Staff. Staff also found that Petitioner qualified for an exemption from the requirements of the Forest Conservation Law. There will be no clearing or grading of forest, no loss of specimen trees, and the property is not subject to a tree save plan (Exhibit 25). Impervious surface is not expected to increase on the subject property, despite some confusing language in the Technical Staff report in that regard (Exhibit 45).

There are no other environmental issues except the necessity of assuring, by conditions, that Petitioner complies with all applicable regulations for running this kind of facility, as recommended by Technical Staff and the Hearing Examiner.

### **G. Neighborhood Need**

An Automobile filling Station is one of the special exceptions listed in Zoning Code §59-G-1.24 that requires a determination of neighborhood need. Specifically, the section requires, as a prerequisite to granting the special exception, that the Hearing Examiner find, “from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood.”

To meet this standard, Petitioner submitted a “Needs Analysis” (Exhibit 17(a)), completed by Leonard Bogorad, an expert in market and needs analysis. Mr. Bogorad also testified at the Hearing, explaining his study. Tr. 57-62. Emphasis supplied.

We analyzed data from a sample of neighborhood businesses that was described before, in terms of asking the businesses whether they had a need for diesel fuel for their trucks, how many trucks they had, how many gallons per month, and so on, within a two-mile radius of the site, which we considered to be a reasonable definition of a neighborhood, which was agreed to by the staff analysis of our analysis.

We extrapolated this to the number of businesses overall in the neighborhood, and based upon this analysis, **we found that there was a minimum demand for 833,000 gallons of diesel fuel per month from businesses in the neighborhood**, including a small amount of demand from the Ryder Truck Rental operation itself.

. . . And this is the minimum range that we found. It could well be significantly higher than that.

Mr. Bogorad then indicated that “the existing supply is provided by only two filling stations within a two-mile radius, and another station that's about two

and a half miles away, that have diesel pumps; although these stations are selling primarily gasoline and are serving smaller vehicles . . .” He noted that the existing stations are not well designed for large trucks, and it is not really the orientation of their business. Mr. Bogorad concluded that “the gap is clearly huge between the demand for diesel fuel in this neighborhood, and the supply of existing facilities.” As a result, users must either get most of their diesel fuel outside the neighborhood or establish their own pumps, which “can have environmental [and] security issues.” According to Mr. Bogorad, Petitioner anticipates that it can supply 100,000 to 125,000 gallons of diesel per month out of the Ryder facility, which is only a fraction of the current demand.

Technical Staff reviewed Mr. Bogorad’s study and found no major technical errors, omissions, misinterpretations or mischaracterizations (Exhibit 25, Attachment 3). Staff also accepted Mr. Bogorad’s definition of the neighborhood for needs analysis (“a two-mile ring around its proposed use”). In evaluating the study’s findings, Technical Staff considered three factors, Convenience<sup>8</sup> (which includes proximity and availability of choice), Capacity (*i.e.*, supply already available) and Market Demand. Although Technical Staff raised some questions about the study’s analysis of available supply, they concluded that the Petitioner’s needs analysis was technically sound and that the use should be permitted at the proposed location. The Hearing Examiner agrees.

#### **H. Community Response**

Tony Avedisian, who owns the nearby Tony’s Corvette Shop, and is a part owner of the Limited Liability Corporation which owns the subject land, testified in support of the Petition. Mr. Avedisian also wrote a letter of support which is in the file as Exhibit 19, and, at the Hearing, introduced a letter from a local resident, Stephen E. Row of 19300 Cypress Hill Way, Gaithersburg, (Exhibit 39) stating that “the lights . . . at the Ryder Truck Facility cannot be seen from the vast majority of homes in our neighborhood.” In his own letter (Exhibit 19), Mr. Avedisian stated: “Quarles offers a great product at a fair price and will be filling a need for this area. I am next door to this property and can see no negative impact to the area.”

At the Hearing, Mr. Avedisian testified:

And I think everybody really welcomes it, because there is no place to get decent fuel, and they want to get it. I mean, I've got people that are customers of mine saying, hey, it's great if they come in there. Man, we could use that so we don't have to go driving down to either Rockville or wherever they get their diesel. [Tr. 21.]

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<sup>8</sup> The Hearing Examiner notes that the term “convenience,” which once was included in the wording of Zoning Code §59-G-1.24, no longer appears there. Nevertheless, the Hearing Examiner agrees with Technical Staff’s analysis of public “convenience” as one indicia of public need.



I can tell you from the people that I spoke to, everybody is in favor or looking forward if Quarles moves in there, because there no diesel in the area, really, easily attainable. [Tr. 150]

Because of Mr. Avedisian's personal interest in the outcome of this matter, the Hearing Examiner weighed his testimony with that fact in mind. Nevertheless, neither the Technical Staff nor the Hearing Examiner received any contrary statements from any members of the community, and therefore must conclude that there is no community opposition.

### **III. SUMMARY OF THE HEARING**

Petitioner called five witnesses at the hearing, Greg Natvig, Petitioner's Chief Operating Officer, Leonard Bogorad, an expert in market and needs analysis, Craig McBride, Petitioner's corporate engineer, Stephen E. Crum, a civil engineer and Stephen Peterson, an expert in traffic planning and engineering. Martin Klauber, the People's Counsel, participated in the hearing, but did not call any witnesses. Tony Avedisian, owner of Tony's Corvette Shop, testified in support of the Petition.

At the outset of the hearing, there was some discussion about the then pending variance application, but those issues were mooted by its subsequent withdrawal. Also discussed was the fact that the Special Exception Notice Sign, though posted prior to July 21, 2003 (Tr. 24 and Exhibits 27 and 28)), blew down after a couple of months. Mr. Avedisian found it in the street and propped it up against the fence. Tr. 6-8, 26. Since the special exception notice sign was posted for a number of months, and the variance notice sign was posted for the entire time, and both had the same hearing date, the Hearing Examiner elected to proceed, finding that the combined sign notice was sufficient, with the record to be held open to receive any further community comments which might require an additional hearing. Tr. 20-28. The hearing was completed on May 3, 2004, and the record remained open June 17, 2004, with no further community participation. Petitioner filed an affidavit of posting, referencing both signs, on June 3, 2004 (Exhibit 50).

#### **A. Petitioner's Case**

##### **1. Greg Natvig**

Greg Natvig testified that he is Petitioner's Chief Operating Officer and as such, he runs the Quarles Fuel Network, which he described as a network of 60 unattended fuel islands that cover an area from above Baltimore down to Greensboro, and west to the Pennsylvania line. Tr. 32-52.

Mr. Natvig further testified that Quarles is in business to serve commercial customers. Typically, Petitioner either leases or purchases land in an industrial park environment, and serves the customers within a mile and a half to two mile radius of that location. Quarles issues its own card, which is tailored to the individual business.

Sales are not made to the general public. Direct sales representatives will call on the individual customers and design a fuel program for them that will include pricing, how many times a card is going to be used, days of the week and security concerning the use of the card. Cards are matched to the number of

vehicles being served, so there are limits that are placed on the amount of fuel a person can have.

Petitioner's stations are regularly visited by maintenance, technical and sales staff. There are numerous safety features built into the equipment, although Petitioner has not had any safety problems at its other locations. Tr. 38-40. Ryder will continue to rent trucks from the subject site. Mr. Natvig testified that there was no intention to move any of the equipment and didn't think there was room to do so.<sup>9</sup>

On cross-examination, Mr. Natvig testified that there are no other similar fueling facilities within a two mile radius. Tr. 51.

## 2. Leonard Bogorad

Leonard Bogorad testified as an expert in market and needs analysis. As stated by Mr. Bogorad, Tr. 57-62:

We analyzed data from a sample of neighborhood businesses that was described before, in terms of asking the businesses whether they had a need for diesel fuel for their trucks, how many trucks they had, how many gallons per month, and so on, within a two-mile radius of the site, which we considered to be a reasonable definition of a neighborhood, which was agreed to by the staff analysis of our analysis.

We extrapolated this to the number of businesses overall in the neighborhood, and based upon this analysis, we found that there was a minimum demand for 833,000 gallons of diesel fuel per month from businesses in the neighborhood, including a small amount of demand from the Ryder Truck Rental operation itself.

. . . And this is the minimum range that we found. It could well be significantly higher than that.

Mr. Bogorad then indicated that "the existing supply is provided by only two filling stations within a two-mile radius, and another station that's about two and a half miles away, that have diesel pumps; although these stations are selling primarily gasoline and are serving smaller vehicles . . ." He noted that the existing stations are not well designed for large trucks, and it is not really the orientation of their business. Mr. Bogorad concluded that "the gap is clearly huge between the demand for diesel fuel in this neighborhood, and the supply of existing facilities."

As a result, users must either get most of their diesel fuel outside the neighborhood or establish their own pumps, which "can have environmental [and]

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<sup>9</sup> After the Hearing, Petitioner changed its mind and decided to move the southernmost pump 2½ feet to the north, as noted above.

security issues.” According to Mr. Bogorad, Petitioner anticipates that it can supply 100,000 to 125,000 gallons of diesel per month out of the Ryder facility, which is only a fraction of the current demand.

### 3. Craig McBride:

Craig McBride testified as Petitioner’s corporate engineer, but not as an expert witness. His job is to coordinate the technical and procedural process to either upgrade or develop fuel stations and storage plants for the company. Mr. McBride used the Site Plan to describe the functioning of the subject facility. Tr.64-66. Trucks enter the driveway by making a right turn from Woodfield Road and then follow a one-way path to the north, around the Ryder building and then back through the pumps and out.

According to Mr. MCBride, the canopy will remain the same, except that a 20 inch by 108 inch Quarles sign would be put on its face. If approved, Petitioner would also add a four foot tall Quarles sign below Ryder sign. Tr. 72-74. Mr. McBride also described the landscaping and lighting, and noted that the closest residential area was across Woodfield Road and is now occupied by a church. Some of the lighting and landscaping in question is outside the Quarles leasehold area (but not outside the lot in question). People’s Counsel then expressed a concern as to whether the Board of Appeals could condition a special exception by requiring action outside the area subject to the special exception. Tr. 76-84. (This issue has been discussed in Part II.D., on pages 13-14 of this Report.)

Mr. McBride testified that all equipment “meets the National Fire Protection 30-38 codes for tank storage and services station.” Tr. 89. He also described built-in safety features. The facility will be open 24 hours a day, and has already been inspected twice by the Maryland Department of the Environment. Tr. 95-96. Based on his operational familiarity with the facility, Mr. McBride testified that, in his opinion, no aspect of the operation (e.g., lights, fumes, odors, noise) would be objectionable to the surrounding neighborhood because it is set back fairly far away from the residential areas. Tr. 98.

Finally, Mr. McBride testified that he thought there would be great practical difficulties in moving the pumps even 2.45 feet. Tr. 113-114. There is no industry regulation on the width of the service aisles, but there are ADA regulations and industry practice that affect the width of the service aisles. Tr. 115-117.

### 4. Stephen E. Crum:

Stephen E. Crum testified as an expert in civil engineering. Mr. Crum testified to the landscaping to be added to satisfy the Technical Staff’s directions. He also testified that the storm water management and sediment control are adequate to accommodate this use and that sewer and water service were present, but not required by this use. Tr. 123.

In Mr. Crum’s opinion, the site plans meets all the zoning ordinance requirements (except for the location of the southernmost pump), and would not have an adverse effect on surrounding properties. Tr. 125. There would actually be a net decrease in impervious area because Petitioner will be removing some paving for landscaping. Tr. 126. While the shape of the Ryder lot is not unique, it has an

unusual shared driveway at its southern end. Tr. 128-130. The storm water management facility on the lot also limits flexibility in the lot's use. Tr. 133-137.

5. Stephen Peterson:

Stephen Peterson testified as an expert in traffic planning and engineering, and prepared a traffic impact analysis for the proposed use. He determined "that the site does, in fact, qualify under the 50 trip threshold [of the LATR] with approximately 40 to 45 trips being generated at peak hour of free traffic, and therefore . . . that the traffic statement that has been presented in the record is sufficient." Tr. 139-141.

Although those numbers are below the LATR threshold of 50 peak hour trips which would require a further traffic study, Mr. Peterson did do a critical lane analysis for the "right turn in" and "right turn out" of the facility and found that both were well below the 1500 congestion standard. Tr. 143.

Mr. Peterson concluded that the special exception will not have an adverse effect on area roadway conditions or adversely effect vehicular or pedestrian safety. Tr. 144.

**B. People's Counsel**

The People's Counsel expressed concern about the variance applications, but they were ultimately withdrawn. He supported the Petition because he felt that "[t]here was a wonderful case made out for need." Tr. 165.

**C. Community Testimony**

Tony Avedisian

Community participant, Tony Avedisian, who owns the nearby Tony's Corvette Shop, testified in support of the Petition. Mr. Avedisian also introduced a letter from a local resident, Stephen E. Row of 19300 Cypress Hill Way, Gaithersburg, (Exhibit 39) stating that "the lights . . . at the Ryder Truck Facility cannot be seen from the vast majority of homes in our neighborhood."

Mr. Avedisian testified that "everybody really welcomes [Petitioner's filling station] because there is no place to get decent fuel, and they want to get it. I mean, I've got people that are customers of mine saying, hey, it's great if they come in there. Man, we could use that so we don't have to go driving down to either Rockville or wherever they get their diesel." Tr. 21.

Later, Mr. Avedisian reiterated, ". . . I can tell you from the people that I spoke to, everybody is in favor or looking forward if Quarles moves in there, because there [is] no diesel in the area, really, easily attainable." Tr. 150.

**IV. FINDINGS AND CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (Zoning Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as

long as Petitioner complies with the conditions set forth in Part V, below.

### **A. Standard for Evaluation**

The standard for evaluation prescribed in Zoning Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.21. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an Automobile Filling Station use. Characteristics of the proposed Automobile Filling Station use that are consistent with the “necessarily associated” characteristics of Automobile Filling Station uses will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with Automobile Filling Station uses, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff opined that the inherent adverse effects associated with automobile filling stations include the environmental impacts of spillage of oils and other automobile fluids, fumes from idling vehicles, queuing of vehicles, noise, signage, lighting and hours of operation. The Hearing Examiner agrees that these characteristics are inherent in the use, and would add that some degree of danger is also inherent in the handling of fuels.

Technical Staff cited the Petitioner’s diversion from the I-4 Zone setbacks as a non-inherent characteristic, but found that these differences did not justify denial of the special exception, either alone or in combination with the inherent characteristics. The Hearing Examiner agrees for two reasons. First, as noted by the Technical Staff, these pumps have existed in their present location for 15 years, without adverse impact, and movement of the southernmost pump 2½ feet to the north could only reduce the possibility of adverse impact on a neighbor. Secondly, as discussed at great length in Pat II. E. of this Report, any divergence from the I-4 zone setbacks is permitted by grandfathering language included in the part of the Code that established the I-4 Zone. Therefore, for such divergence to justify denial would, in the Hearing Examiner’s opinion, require some showing of adverse effects on the neighbors, and no such showing exists in this case.

In sum, based on the evidence in this case, and considering size, scale, scope, light, noise, traffic and environment, the Hearing Examiner agrees with the conclusion of the Technical Staff that there are no non-inherent effects that require a denial.

## **B. General Conditions**

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report, the exhibits and the testimony of the witnesses provide ample evidence that the general standards would be satisfied in this case.

### **Sec. 59-G-1.21. General conditions.**

**§5-G-1.21(a)** *-A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

*(1) Is a permissible special exception in the zone.*

Conclusion: An Automobile Filling Station use is a permissible special exception in the I-4 Zone, pursuant to Code § 59-C-5.21.

*(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.06 for an Automobile Filling Station use as outlined in Part C, below.

*(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property is located within the 1985 Gaithersburg Vicinity Master Plan area. The Master Plan sets the recommended zoning for the Airpark area in Table 3 on pp. 46-48. The subject property and its immediate surroundings are located in item number 61 (p. 48), and the Plan

recommends the I-1 and I-4 zones currently located in the area. In fact, the Plan notes that the I-4 Zone was created “to guide development of industrial parcels in this area” (p. 49). There is no further guidance in the Master Plan, but the I-4 Zone it endorses does permit the requested Automobile Filling Station as a special exception. Thus, the Hearing Examiner finds, as did Technical Staff, that the proposed use is in conformance with the Master Plan.

(4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The Hearing Examiner agrees with Technical Staff’s conclusion that the use will be in harmony with the general industrial character of the neighborhood. The subject site and most of its neighborhood is within the Montgomery County Airpark. There are no new structures planned. The intensity, activity, and character of traffic created by the proposed use is within acceptable limits, and will be harmonious with the remainder of the neighborhood.

(5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The Hearing Examiner concludes that the proposed use will not be detrimental to the peaceful enjoyment, economic value or development of surrounding properties at the site. As noted above, the proposed use is located in an industrial zone and will have no physical impact on the nearest residences. On the positive end, it will help ensure an adequate supply of diesel fuel to the area.

(6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff concluded that the use will not cause any objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, and the Hearing Examiner agrees. Staff noted that the use has existed in a modified form for 15 years, and that it is surrounded by industrial and institutional uses. To the extent that any of the cited effects

are noticeable, they are inherent to the use. The proposed new lights have been the subject of a photometric study (Exhibit 42(b)), and there is very little light spillage outside of the Ryder Truck facility. That light which does escape penetrates only a short distance onto the neighboring industrially zoned properties. The illuminated identification signs will be unobtrusive additions to an existing sign and canopy. Thus, the special exception would be compliant with this provision.

*(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Technical Staff reports that there is only one existing special exception within the defined neighborhood, and it is in an industrial zone, not a residential zone. That special exception is S-2350, approved December 21, 1998, for a combined Amoco Gas Station and MacDonald's Restaurant at 19030 Woodfield Road.<sup>10</sup> As noted above, the proposed automobile filling station use is consistent with the recommendations of the *Gaithersburg Vicinity Master Plan*. Thus, the evidence supports the conclusion that the special exception proposed in this case will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the nature of the area.

*(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use will not be a danger to public health, safety or security. Tr. 89-96. The nature of the use makes the morals issue inapplicable. Thus, the Hearing Examiner finds that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

*(9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

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<sup>10</sup> Their motto should be "Eat here / Get gas."



Conclusion: The evidence supports the conclusion that the proposed special exception would be adequately served by the specified public services and facilities. Tr. 123. By its nature, the use does not burden public schools, nor does it require sewer or water service. Police and fire protection are presumed adequate by the Annual Growth Policy unless those agencies specify otherwise, which they have not.

- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the public facilities review must include analysis of both the Local Area Transportation Review ("LATR") and the Policy Area Transportation Review ("PATR"). Petitioner's traffic engineer, Stephen Peterson did such an analysis and found that the total peak hour trips expected from the combined use (*i.e.*, Ryder plus Quarles) amounts to 45 morning and 34 evening peak hour trips. Although those numbers are below the Local Area Transportation Review (LATR) threshold of 50 peak hour trips which would require a further traffic study, Mr. Peterson did do a critical lane analysis for the "right turn in" and "right turn out" of the facility and found that both were well below the 1500 congestion standard. Tr. 143. Technical Staff reviewed these findings and concluded that "the proposed use satisfies the requirements of Local Area Transportation Review and Policy Area Transportation Review [PATR] tests and will have no adverse effect on Roadway conditions or pedestrian facilities." The approval regarding PATR is based on Technical Staff's determination that the Montgomery Village/Airpark Policy Area has a remaining capacity of a positive 37 jobs as of April 30, 2004, under the FY 2004 Annual Growth Policy (AGP) staging ceiling. The Hearing Examiner agrees with these conclusions.

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

Conclusion: Technical Staff noted that access to the site will remain unchanged, traffic patterns are not expected to change as a result of the special exception and there is more than sufficient pavement to ensure that vehicular queuing will be contained within the site. Staff therefore concluded, as did Mr. Peterson (Tr. 144), that the special exception will not have an adverse effect on area roadway conditions or adversely affect vehicular or pedestrian safety. There is no evidence to the contrary, and the Hearing Examiner therefore concludes that the proposed use would have no detrimental effect on the safety of vehicular or pedestrian traffic.

### **C. Specific Standards**

The testimony and the exhibits of record, including the Technical Staff reports, provide sufficient evidence that the specific standards required by Section 59-G-2.06 are satisfied in this case, as described below.

#### **Sec. 59-G-2.06. Automobile filling stations.**

- (a) *An automobile filling station may be permitted, upon a finding, in addition to findings required in division 59-G-1, that:*

*(1) The use will not constitute a nuisance because of noise, fumes, odors or physical activity in the location proposed.*

Conclusion: For all the reasons set forth on page 37 of this Report in response to General Condition §5-G-1.21(a)(6), the Hearing Examiner concludes, as did Technical Staff, that the use will not cause any objectionable noise, vibrations, fumes, odors or physical activity at the subject site. This conclusion is further supported by the testimony of Craig McBride (Tr. 98) and Stephen Crum (Tr. 125). Technical Staff opined that, rather than being a nuisance, “industrial uses such as the one proposed, are in fact, the best uses of this land.”

*(2) The use at the proposed location will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads or intersections, or its location in relation to other*

*buildings or proposed buildings on or near the site and the traffic pattern from such buildings, or by reason of its location near a vehicular or pedestrian entrance or crossing to a public or private school, park, playground or hospital, or other public use or place of public assembly.*

Conclusion: For all the reasons set forth on pages 39-40 of this Report in response to General Condition §5-G-1.21(a)(9)(i) and (ii), the Hearing Examiner concludes, as did Technical Staff, that the use will not create a traffic hazard or a traffic nuisance for any of the stated reasons. Although the land confronting the subject parcel has been recently developed by the Interdenominational Church of God, Technical Staff points out that the Church does not have any access points on Woodfield Road. Furthermore, Woodfield Road, which separates the two uses, is a six-lane divided roadway. It would therefore act as a significant buffer, and Technical Staff concluded that the church would not be adversely affected. The Hearing Examiner agrees.

*(3) The use at the proposed location will not adversely affect nor retard the logical development of the general neighborhood or of the industrial or commercial zone in which the station is proposed, considering service required, population, character, density and number of similar uses.*

Conclusion: As discussed above, the evidence supports the conclusion that there will be no adverse effect on the area. On the contrary, the needs analysis done in this case demonstrates that the proposed use will support logical development in the industrial zone by fulfilling a demonstrable need.

*(b) In addition, the following requirements must be complied with:*

*(1) When such use abuts a residential zone or institutional premises not recommended for reclassification to commercial or industrial zone on an adopted master plan and is not effectively screened by a natural terrain feature, the use shall be screened by a solid wall or a substantial, sightly, solid fence, not less than 5 feet in height, together with a 3-foot planting strip on the outside of such wall or fence, planted in shrubs and evergreens. Location, maintenance, vehicle sight distance provisions and advertising pertaining to screening shall be as provided for in article 59-E. Screening shall not be required on street frontage.*

Conclusion: Not applicable.

*(2) Product displays, parked vehicles and other obstructions which adversely affect visibility at intersections or to station driveways are prohibited.*

Conclusion: Technical Staff found that there will be no product displays, parked vehicles or other obstructions to adversely affect site access. The Hearing Examiner agrees.

*(3) Lighting is not to reflect or cause glare into any residential zone.*

Conclusion: For all the reasons set forth on pages 37-38 of this Report in response to General Condition §5-G-1.21(a)(6), the Hearing Examiner concludes, as did Technical Staff, that the use will not cause any light spillage or glare into any residential zone.

*(4) When such use occupies a corner lot, the ingress or egress driveways shall be located at least 20 feet from the intersection of the front and side street lines of the lot as defined in section 59-A-2.1, and such driveways shall not exceed 30 feet in width; provided, that in areas where no master plan of highways has been adopted, the street line shall be considered to be at least 40 feet from the center line of any abutting street or highway.*

Conclusion: Not applicable.

*(5) Gasoline pumps or other service appliances shall be located on the lot at least 10 feet behind the building line; and all service storage or similar activities in connection with such use shall be conducted entirely within the building. There shall be at least 20 feet between driveways on each street, and all driveways shall be perpendicular to the curb or street line.*

Conclusion: Petitioner plans to comply with the 10 foot setback by moving the southernmost pump 2½ feet to the north, thus putting it over 10 feet from property line/building line. The setback issue is discussed at great length in Part II. E. of this Report. After careful consideration of the issue, the Hearing Examiner concludes that Petitioner's plan to move the subject

pump will make it compliant with the setback provision. All service storage will be contained in a kiosk, with fuel in underground tanks. There is only one driveway, and it is perpendicular to the street line.

*(6) Light automobile repair work may be done at an automobile filling station; provided, that no major repairs, spray paint operation or body or fender repair is permitted.*

Conclusion: The Petitioner is not proposing any repair work relative to the proposed use. Vehicular repairs are conducted in the adjacent Ryder administrative and service building, but it is not the subject of this special exception. No changes in use or additions are proposed relative to this adjacent building.

*(7) Vehicles shall not be parked so as to overhang the public right-of-way.*

Conclusion: No parking areas are associated with the proposed use. Parking areas in the adjacent Ryder Truck lot are not located near the public right-of-way.

*(8) In a C-1 zone, an automobile, light truck and light trailer rental, as defined in section 59-G-2.07, and in a C-2 zone, an automobile, truck and trailer rental lot, as defined in section 59-G-2.09, may be permitted as a part of the special exception, subject to the provisions set forth for such uses in this section. In addition, a car wash with up to 2 bays may be allowed as an accessory use as part of the special exception.*

Conclusion: Not applicable.

#### **D. Additional Applicable Standards**

##### **59-G § 1.23. General development standards**

- (a) **Development Standards.** *Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: The following chart from the Technical Staff Report (Exhibit 25), corrected and modified to reflect subsequent submissions, demonstrates compliance with all development standards, some of which are grandfathered from the I-

1 Zone:

Development Standard	Required	Provided	Provided with Use Change
Minimum Lot Area if adjacent to I – 1 Zone (in acres) or if recommended for I-4 (Section C-5.44)	2.00	2.19	2.19
Maximum F.A.R. For all buildings	89,000 sq. ft. sq. ft. or 1.0	9,232 sq. ft. or .10	9,296 sq. ft. or .10
Setbacks (in feet)			
From any commercial or industrial zone	10	7.55	7.55 (grandfathered)
From a major highway	50	50	50
Building (canopy) height Limitations (in stories) (in feet) (Section 59-C-5.3)	3 42	1 about 21	1 about 21
<i>Green area shall be provided for not less than (percent of gross tract area) (Section 59-C-5.32)</i>	<i>20% in I-4 Zone 10% in I-1 Zone .</i>	<i>11.3% or 10,792 sq. ft.(grandfathered)</i>	<i>11.3% or 10,792 sq. ft.(grandfathered)</i>
<b>SIGNS</b>			
Freestanding Sign—(Section 59-F-4.2(1)) Ryder Truck—Quarles Petroleum Identification Sign at Entrance Drive			
Total area of all signs on a lot in an industrial zone (in square feet)	800	200	200
Maximum sign area for a lot or parcel (2 sq. ft. for ea. linear ft. of building frontage)	400	42	66
Setback in feet from building restriction line (1/4 distance required for zone)	12.5	37	37
Height not to exceed height of tallest building on same premises—maximum 26 feet	26	24	24
Canopy Sign- (§ 59-F-4.2(3))	No limit on number	0	3
<b>GASOLINE PUMPS - Section 59-G-2.06(b)-(5)</b>			
Setback from building restriction line (in feet)	10	7.55	10

- (b) **Parking requirements.** *Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: The proposed use is unmanned, and thus has no need for regular parking; however, there is ample parking available on the Ryder Lot.

- (c) **Minimum frontage.** *In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*
- (1) *Rifle, pistol and skeet-shooting range, outdoor.*
  - (2) *Sand, gravel or clay pits, rock or stone quarries.*
  - (3) *Sawmill.*
  - (4) *Cemetery, animal.*
  - (5) *Automobile Filling Stations and Automobile Filling Stations, including radio and T.V. broadcasting stations and telecommunication facilities.*
  - (6) *Riding stables.*
  - (7) *Heliport and helistop.*

Conclusion: There are no applicable frontage requirements in the I-4 Zone.

- (d) **Forest conservation.** *If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: The subject property is not within a special protection area, and a Natural Resource Inventory/Forest Stand Delineation was reviewed and approved by the Technical Staff. Staff also found that Petitioner qualified for an exemption from the requirements of the Forest Conservation Law. There will be no clearing or grading of forest, no loss of specimen trees, and the property is not subject to a tree save plan (Exhibit 25).

- (e) **Water quality plan.** *If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by*

*the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: Impervious surface is not expected to increase on the subject property, despite some confusing language in the Technical Staff report in that regard (Exhibit 45). A recommended condition for granting the special exception is that the Petitioner must comply with stormwater and sediment control regulations of the Montgomery County Department of Permitting Services (DPS).

- (f) **Signs.** *The display of a sign must comply with Article 59-F.*

Conclusion: The proposed signs comply with applicable regulations as shown in the discussion of Development Standards, above.

- (g) **Building compatibility in residential zones.** *Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: Not applicable.

- (h) **Lighting in residential zones.** *All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

- (1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*
- (2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: Not applicable.

**59-G-1.24. Neighborhood need.**

*In addition to the findings and requirements of Article 59-G, the following special exceptions may only be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the*



*present availability of identical or similar uses to that neighborhood:*

- (1) *Automobile filling station.*
- (2) *Automobile and light trailer rental lot, outdoor.*
- (3) *Automobile, truck and trailer rental lot, outdoor.*
- (4) *Automobile sales and service center.*
- (5) *Swimming pool, community.*
- (6) *Swimming pool, commercial.*

An Automobile filling Station is one of the special exceptions listed in Zoning Code §59-G-1.24 that requires a determination of neighborhood need. That need was amply demonstrated in a “needs analysis” done by Petitioner’s expert and approved by Technical Staff. This needs analysis is discussed at some length in Part II. G. of this Report, on pages 25-26. Based on the data discussed in that section, the Hearing Examiner finds, from a preponderance of the evidence of record, that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood.

Based on the testimony and evidence of record, I conclude that the Automobile Filling Station use proposed by Petitioner, as conditioned below, meets the specific and general requirements for the special exception, and that the Petition should be granted, subject to the conditions set forth in Part V of this report.

## **V. RECOMMENDATION**

Based on the foregoing analysis, I recommend that Petition No. S-2587, seeking a special exception allow an existing Automobile Filling Station to service clients in addition to the current on-site user, Ryder Truck Rental, located at 19210 Woodfield Road, Gaithersburg, be GRANTED, with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. The special exception is limited to four existing pumping stations/three fuel dispensers as an unattended operation.
3. The Petitioner must comply with stormwater and sediment control regulations of the Montgomery County Department of Permitting Services (DPS).
4. Fuel storage tank and fuel pump installation and use, must comply with the control guidelines and air quality permitting requirements of the Maryland Department of the Environment (MDE). In particular, the Petitioner must properly install, maintain and use Stage I and Stage II Vapor Recovery systems and a Vapor balance line.
5. Fuel storage tanks must meet required technical standards and must comply with all county, state and federal permitting requirements.

6. The canopy area for the automobile fuel pumps is limited to its current dimensions.
7. The former attendant's kiosk, proposed as an electrical/storage equipment storage kiosk, is limited to its present dimensions.

Dated: July 16, 2004

Respectfully submitted,

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Martin L. Grossman  
Hearing Examiner